

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND ARDEN PULLEY, D.M.D.**

Come now Arden Pulley, D.M.D. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and/or other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 012590 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee Arden Pulley, D.M.D. is licensed by the Board as a dentist, License No. 012590. Licensee's Missouri license is and was at all times relevant herein, current and active.

3. On or about May 30, 2013, the Board received information from Sandy Barnes, R.N., supervisor for Provider Review, Missouri Medicaid Audit & Compliance (MMAC). The complaint from MMAC stated that a pharmacist was concerned about the frequency of Hydrocodone, Vicoden, Percocet and Norco prescribed by Licensee. As a result of the pharmacist's concern, MMAC conducted an investigation that revealed that Licensee's records lacked medical history and physical examinations, co-morbid conditions, allergies, etc., and most dates of service have only 3-5 words noted in the record. The complaint stated that there were three patients with the highest use and their records were lacking including, at times, the number of pills being missing. The records contained no documentation of how the prescription was given and Licensee did not submit any copies of the prescription. Licensee's records also contained documentation of herbal or natural medications but did not contain any history or physical examination to effectively evaluate the need for the supplements or the risks associated with them.

4. On or about April 11, 2013, the Board received the Medical Malpractice Claim Report filed by patient S.H. against Licensee. Licensee saw S.H. for a flipper to replace tooth #7. Licensee provided the flipper and failed to refer her to a periodontist.

5. Based on the complaints identified in paragraphs 3 and 4 above, the Board conducted an investigation.

6. On or about December 23, 2014, Board Investigator Tracey Pfaff went to Licensee's practice location to discuss the complaint from MMAC regarding possible drug diversion. Licensee stated that he was familiar with the complaint but he thought "it was all taken care of after the people from Medicaid came and spoke with him." He stated that he had a patient C.S. that he had released because "he was abusing the pain medications [Licensee] had been prescribing him." He stated he removed some of C.S.' teeth but he could not

remember which teeth. He stated that C.S. came back with "severe pain" after having his teeth removed and developed osteomyelitis which "caused [C.S.] to ask for pain medication on a regular basis." Licensee stated he prescribed C.S. antibiotics and pain medication and was "just trying to help him." Licensee stated that "once he realized [C.S.] was abusing pain medication he released him as a patient."

7. During Investigator Pfaff's December 23, 2014 visit, Licensee also discussed two additional patients of concern related to over prescribing – M.R. and L.I. Licensee stated that M.R. was a former patient. Licensee stated once he realized that M.R. had become addicted to the pain medication Licensee prescribed him, Licensee quit prescribing it and M.R. stopped coming to him. Licensee stated that he initially saw M.R. and removed tooth #9 which got a dry socket. Licensee stated he prescribed the pain medication and antibiotics as a result. Licensee stated that M.R. would call his office and state he lost the prescription and ask for another. Licensee stated he would give him another until "he realized he was being taken advantage of" by M.R. Regarding patient L.I. Licensee stated he was "another patient who was abusing prescription medications" so he released him as a patient. Licensee stated he first saw L.I. for crown work. Licensee stated he realized L.I. was addicted to pain medication, in particular Percocet.

8. Licensee admitted to Investigator Pfaff there was a pattern with the three patients but that he "just wanted to help people." He stated that it was possible that he had other patients like those three but he "wasn't sure." He stated he "got tired of being taken advantage of by patients wanting more and more pain medication." He also stated he changed his prescribing procedures and was "keeping better records now" including charting how many and what kind of pills are being prescribed.

9. Also during the December 23, 2014 visit, Investigator Pfaff conducted an infection control inspection. Licensee was not in compliance and could not provide proof of weekly spore testing. Licensee stated his assistant normally did the testing. Investigator Pfaff also conducted a continuing education audit. Licensee stated he would send proof to the office of his continuing education because he did not have it available. On January 6, 2015, Investigator Pfaff emailed Licensee's office manager requesting the continuing education and spore test results. On January 6, 2015, the office manager returned Ms. Pfaff's email and stated that they did not have spore testing information but would be "starting over from scratch." Ms. Pfaff informed her that they needed to send spore test results until further notice. They sent no records for spore testing or

continuing education by January 23, 2015. On May 14, 2015, Investigator Pfaff received proof of Licensee's continuing education compliance. To date, Licensee has not provided monthly spore test results.

10. On March 31, 2015, Board Investigator Pfaff returned to Licensee's office to discuss the complaint from patient S.H. Licensee stated that he thought it was taken care of since it was settled out of court but he was okay to discuss it. He stated S.H. was a patient from 2003 through 2011. Licensee stated he had not seen her since the settlement, although S.H. wanted to return as a patient and Licensee stated he denied her request. Licensee stated he never had issues with S.H. until the issue that caused her to file the suit. He stated she filed it because he did not "refer her to a periodontist like she should have and that ended up causing her long term problems cause by periodontal disease." Licensee stated that she had advanced periodontal disease with severe bone loss. Licensee stated he did not diagnose the periodontal disease, the orthodontist did because he could not put braces on until it was treated. Licensee stated that he "takes full responsibility for what happened and ... should have referred her to a periodontist before it got to the point it did." He stated that he "was wrong for not referring S.H. to a periodontist and he is sorry for the damage that was done."

11. On April 13, 2015, Investigator Pfaff also spoke with S.H. S.H. stated that she was a patient of Licensee's for ten years and went every six months for regular check-ups. S.H. stated that Licensee referred her to an orthodontist for braces and it was the orthodontist that informed her of the severe periodontal disease. The orthodontist referred her to a periodontist for treatment because it was necessary before he could put braces on her teeth. She stated Licensee never informed her she had severe periodontal disease. S.H. stated that the periodontist diagnosed her with severe periodontal disease. She stated she had bone surgery to fix her teeth and it took several months to fix the damage cause by the undiagnosed periodontal disease. She stated she was eventually able to get braces.

12. On or about October 29, 2014, Dr. Schlueter, D.D.S., a licensed Missouri dentist and periodontist, was deposed for purposes of S.H.'s case against Licensee in St. Louis City Circuit Court. Dr. Schlueter testified that he saw S.H. based on a referral from an orthodontist and that S.H. had "generalized moderate with localized severe periodontal disease." He testified that he was able to diagnose it "pretty quick[ly]" based on the x-rays from Licensee. He testified that the bone loss was "significant" and 60-70% of the teeth had at lease moderate periodontal disease. Dr. Schlueter testified that S.H. was "pretty shocked" to hear about the bone loss and to his knowledge, it was the first time she was aware of the fact. Dr. Schlueter testified

that S.H. had good oral hygiene and was a "very good patient." Dr. Schlueter also described his treatment plan all of which was necessary because of the advanced periodontal disease: initial examination, treatment plan and deep cleanings, scaling and root planning, as well as pocket reduction and bone grafting, both surgical procedures. Dr. Schleuter also testified that S.H.'s care she received prior to the referral was below the standard of care of a general dentist because there were not annual x-rays, there was no pocket depth measurements or charting and no referral to an expert in periodontal disease.

13. Licensee appeared before the Board during its regularly scheduled July 2015 Board meeting. Licensee stated that that he did "quite a bit of oral surgery." He stated that his records for three patients regarding prescribing of controlled substances were not sufficient and that "was a mistake." He stated that he "frequently wrote down the drug he was prescribing and the amount and strength." He stated "early on he did not write down the amount but someone came by and told him to." He stated he did prescribe all of the drugs identified in paragraph 5 above. He stated that these patients "taught him that he should not be trusting and bend the rules." He stated he only referred them to another dentist at the end after "too many pills." He stated that he prescribed so many pills because the patients "were in pain." He stated he's changed his ways now because he "felt uncomfortable doing what he did." Regarding the complaint from MMAC, Pulley stated that he had "done no harm to the patients." He stated he was concerned about his patients and "trusting gets him in trouble." He stated he would like to change the past but cannot. Licensee stated that he filled prescriptions through December 2014. Regarding patient S.H. he stated that because of his "failure" her referred her to a periodontist and "settled out of court." He stated that at first she did not come to see him every six months but then she did. He stated he did not probe her teeth because he only probes teeth if "it looks like a problem." He stated "it was a mistake" not to probe S.H.'s teeth.

14. Section 332.052, RSMo, states, in relevant part:

1. Dentists shall maintain an adequate and complete patient record for each patient and may maintain electronic records provided the record-keeping format is capable of being printed for review by the board.

15. Section 332.361, RSMo, states, in relevant part:

1. Any duly registered and currently licensed dentist in Missouri may write, and any pharmacist in Missouri who is currently licensed under the provisions of chapter 338, RSMo, and any amendments thereto, may fill any prescription of a duly registered and currently licensed dentist in Missouri for any drug necessary or

proper in the practice of dentistry, provided that no such prescription is in violation of either the Missouri or federal narcotic drug act.

2. Any duly registered and currently licensed dentist in Missouri may possess, have under his control, prescribe, administer, dispense, or distribute a "controlled substance" as that term is defined in section 195.010, RSMo, only to the extent that:

...
(4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when require therein.

16. Regulation 19 CSR 30-1.048(2) states:

Each individual practitioner shall maintain a record of the date, full name and address of the patient, the drug name, strength, dosage form and quantity for all controlled substances prescribed or administered. This record may be maintained in the patient's record. When the controlled substance record is maintained in the patient's medical record and the practitioner is not the custodian of the medical record, the practitioner shall make the controlled substance record available as required in 19 CSR 30-1.041 and 19 CSR 30-1.044.

17. Licensee's conduct, as described in paragraphs 3 through 14 above, constitutes cause to discipline Licensee's license.

18. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (6), (13), (15), and (16), RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

....

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, assisting, or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

...

(13) Violation of any professional trust or confidence;

...

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(16) Failure or refusal to guard against contagious, infectious or communicable diseases or the spread thereof;

Joint Agreed Disciplinary Order

20. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

21. The terms of the Order shall include that Licensee's dental license be **VOLUNTARILY SURRENDERED in lieu of discipline** and Licensee shall return all indicia of licensure to the Board.

22. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 332, 610 and 324, RSMo.

23. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

24. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

25. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the

Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

26. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

Aredn Pulley, D.M.D.
Aredn Pulley, D.M.D.

Date March 9, 2016

BOARD

Brian Barnett
Brian Barnett,
Executive Director
Missouri Dental Board

Date 3/15/2016